### MS PETITION

Docket No.: 4492-0104P

(PATENT)

### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of: Nobuyuki NAKAMURA

Application No.: 10/659,264 Confirmation No.: 3531

Filed: September 11, 2003 Art Unit: 3682

For: CAM ROTATION CONTROL MECHANISM Examiner: V. Luong

### PETITION UNDER 37 C.F.R. § 1.181 TO WITHDRAW THE HOLDING OF ABANDONMENT

#### MS PETITION

Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

Sir:

In response to the Notice of Abandonment dated November 6, 2006, applicant hereby respectfully petitions under the provisions of 37 C.F.R. § 1.181 and MPEP § 711.03(c) for a decision to withdraw the holding of abandonment due to failure to receive an Office Action.

The Notice of Abandonment dated November 6, 2006 indicates that this application was abandoned in view of the applicant's failure to respond to an Office Action mailed on March 28, 2006.

However, this Office Action was never received by the offices of the undersigned, and a search of the file jacket for the present application and the firm docketing records reveals that the Office Action of March 28, 2006 was never received. The offices of the undersigned did not become aware of the Office Action until advised of the holding of abandonment.

Application No.: 10/659,264 Docket No.: 4492-0104P

### 1. EVIDENCE

The fact that the Office Action of March 28, 2006 was never received in the offices of Birch, Stewart, Kolasch & Birch, LLP is evidenced by Exhibits A, B, and C attached hereto.

**Exhibit A** is a copy of the front page of the file jacket of Appl. No. 10/659,264 (which corresponds to Attorney Docket No. 4492-0104P). It is the policy in our office to record all information regarding Office Actions and responses on the front page of the file jacket. As the Petitions Examiner will note, there is no entry for the Office Action dated March 28, 2006 on the front page of the file jacket of the above-referenced application.

**Exhibit B** is a copy of the computer-generated daily docket sheet(s) of Birch, Stewart, Kolasch & Birch, LLP for the date of June 28, 2006 (the due date for said Office Action), containing entries made by our Docketing Department of due dates in response to PTO actions. It is the policy of our offices to docket all due dates for Office Actions received from the USPTO into our computer docketing system.

Although Application Numbers, Titles, and Client Names have been reducted from this Exhibit to avoid public disclosure of these matters once the present application is patented, it is still clear that there is no entry for the due date of June 28, 2006 which corresponds to the current application, Attorney Docket No. 4492-0104P.

The undersigned certifies that he has reviewed the computer-generated daily docket sheets for the due date of June 28, 2006 and did not locate an entry that corresponds to Appl. No. 10/659,264 to inventor Nobuyuki NAKAMURA.

**Exhibit** C is a copy of the Image File Wrapper for Appl. No. 10/659,264 (which corresponds to Attorney Docket No. 4492-0104P) which shows that the USPTO mailed the Office Action on March 28, 2006, but also shows that the Office Action was returned to the USPTO as undelivered mail on March 29, 2006.

Application No.: 10/659,264 Docket No.: 4492-0104P

### 2. TERMINAL DISCLAIMER

The present application was filed on or after May 29, 2000. Accordingly, no Terminal Disclaimer is necessary. It is noted that the present Petition is being timely filed within two (2) months of the mailing date of the Notice of Abandonment. Accordingly, no reduction in patent term adjustment should be made, in accordance with the provisions of 37 C.F.R. § 1.704(c)(4).

The present application was filed on or after June 8, 1995 but before May 29, 2000. The present Petition is being timely filed within two (2) months of the mailing date of the Notice of Abandonment. Accordingly, no Terminal Disclaimer under 37 C.F.R. § 1.321(a) is necessary. See MPEP § 711.03(c).

The present application was filed on or after June 8, 1995 but before May 29, 2000. The present Petition is being filed more than two (2) months from the mailing date of the Notice of Abandonment. Accordingly, a Terminal Disclaimer under 37 C.F.R. § 1.321(a) and the required fee set forth in 37 C.F.R. § 1.20(d) are being submitted concurrently herewith. The period being disclaimed is equivalent to the period between (1) the date that is two months after the mail date of the notice of abandonment and (2) the filing date of the present petition to withdraw the holding of abandonment. See MPEP § 711.03(c).

In view of the above-described facts, it is respectfully submitted that the abandonment of the present application was unavoidable and due solely to problems with mailing of an Office Action since the Office Action dated March 28, 2006 was never received in the offices of Birch, Stewart, Kolasch & Birch, LLP. The present Petition is timely filed for this purpose.

Since the above-mentioned Office Action was never received in the offices of the undersigned, it is believed that no petition fee is necessary in connection with this Petition.

Application No.: 10/659,264 Docket No.: 4492-0104P

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fee required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Dated: January 5, 2007

Respectfully submitted,

Terrell C. Birch

Registration No.: (9,382

BIRCH, STEWART, KOLASCH & BIRCH, LLP

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Suite 100 East

P.O. Box 747

Falls Church, Virginia 22040-0747

(703) 205-8000

Attorney for Applicant

Attachments

### APPENDIX A

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## APPENDIX B

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Action Attorney(Attorney2): RJW ROBERT J. WEBSTER

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Tuesday, June 27, 2006	27, 2006	Due Date List By Floor 28-Jun-2006 To 28-	By Floor 28-Jun-2006		Page: 29
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Floor: 5th			28-Jun-2006 To	28-Jun-2006			
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Floor: 6th			10 Page 110				
Due Date Indicator	Action Due Action Type		Docket Number/SubCase Country	Status Client	App Number Pat Number	App Date Iss Date	Other Attys
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Tuesday, June 27, 2006	27, 2006	Due Date List By Floor	t By Floor	Page: 35
Floor: 6th		28-Jun-2006 To	28-Лип-2006	
Due Date Indicator	Action Due Action Type	Docket Number/SubCase Country	Status Client	App Number App Date Other Pat Number Iss Date Attys
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Tuesday, June 27, 2006	27, 2006	Due Date List By Floor	it By Floor		Pag	Page: 36
Floor: 6th		28-Jun-2006 To	28-Jun-2006			
Due Date Indicator	Action Due Action Type	Docket Number/SubCase Country	Status Client	App Number Pat Number	App Date Iss Date	Other Attys
28-Jun-2006	FINALX	0020-5262 / 1	Published	***************************************	19-May-2004 TCB	TCB
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		Title:			7	

# APPENDIX C

Page 1 of 2



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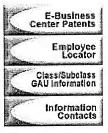


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03/28/2006	Search information including classification, databases and other search related notes	PROSECUTION
03/28/2006	Index of Claims	PROSECUTION
03/26/2006	Examiner's search strategy and results	PROSECUTION
08/23/2005	Status Letter Mailed to Applicant	PROSECUTION
08/16/2005	Miscellaneous Incoming Letter	PROSECUTION
09/11/2003	Fee Worksheet (PTO-875)	PROSECUTION
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09/11/2003	Certified Copy of Foreign Priority Application	PROSECUTION
09/11/2003	Oath or Declaration filed	PROSECUTION
09/11/2003	Drawings	PROSECUTION
09/11/2003	Abstract	PROSECUTION
09/11/2003	Claims	PROSECUTION
09/11/2003	Specification	PROSECUTION

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